



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      **MNRL, MNDL, FFL**

### **Introduction**

This hearing dealt with the Landlords' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. A Monetary Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy pursuant to Section 67 of the Act;
2. A Monetary Order to recover money for unpaid rent pursuant to Sections 26, 46 and 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlords and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord testified that they served the Tenant with the Notice of Dispute Resolution Proceeding package on July 29, 2022 by Canada Post registered mail (the "NoDRP package"). The Landlord referred me to the Canada Post registered mail tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Tenant confirmed there were only two sheets of paper in this registered mail package, but there was no evidence in the envelope. I find that the Tenant was deemed served with the NoDRP

package five days after mailing them on August 3, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Tenant served his evidence on the Landlords on March 26, 2023 by email. The Landlords confirmed receipt of the Tenant's evidence. I find that the Tenant's evidence was deemed served on the Landlords on March 29, 2023 pursuant to Sections 43(1) and 44 of the *Residential Tenancy Regulation* (the "Regulation").

### Issues to be Decided

1. Are the Landlords entitled to an Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy?
2. Are the Landlords entitled to a Monetary Order to recover money for unpaid rent?
3. Are the Landlords entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on March 1, 2019. Monthly rent was \$2,152.00 inclusive of hydro and gas payable on the first day of each month. A security deposit of \$1,000.00 was collected at the start of the tenancy and is still held by the Landlords. The Tenant occupied the upper suite in the house, and sometimes there were tenants in the lower suite.

The Landlords stated they included approximately 40 pages of evidence that was uploaded on the RTB website in the NoDRP package they sent on July 29, 2022. The Tenant stated he only received two stapled pages in the first registered mail package the Landlords sent. The Tenant stated on March 15, 2023, he received evidence from the Landlords, of which most of the pictures had sticky notes on them. This corresponds with the evidence the Landlord uploaded in July 2022.

The Landlords are claiming compensation for unpaid rent, and a monetary order for the Tenant to pay to repair damage done to the rental unit.

*Utility bill*

The Landlords testified that the Tenant did not pay June's utility amount of \$100.00 which covers costs for hydro and gas in the rental unit. The Tenant does not contest this amount.

*Garage electrical*

The Landlords claimed the Tenant exposed a live electrical wire in the garage. They said this created a dangerous situation. They are claiming \$250.00 to cover the assessment and reconnection of the exposed wire by a retired city worker.

In the fall of 2019, the Tenant testified that they had gone to the garage to get their bikes, and when he opened the door, he discovered a four-foot fluorescent light fixture had fallen and was hanging from one screw. The lightbulbs had smashed on the floor. The Tenant wrote in his statement that there were wires from the light fixture and other wires hanging down from the rafters.

The Tenant stated he told the Landlord about the light fixture. He said that the Landlord gave him permission to disconnect the wires as the Tenant could not get into the basement suite to the breaker panel. The Tenant has some expertise with electrical fixtures, and while disconnecting the wires, he discovered unsafe wiring. He called the Landlords and informed them. He said the Landlords told him that they would have someone come to look at it. No one ever came, and it remained like that for about two years until the Tenants vacated.

The Tenant uploaded a picture, which was a screen grab from the exit inspection, of how he capped off the exposed wires. The Landlord uploaded a picture of the same wires, and the ends were all exposed. The Tenant said they did that.

*Exterior copper pipe under deck*

The Landlords claimed \$225.00 to repair a burst copper pipe. The pipe burst in the winter because the water had not been turned off. The Landlord said the Tenant told him he was going to repair it, but he did not. I note the Tenant's statement said, "Had I not been evicted I would have gladly made the repair for the Applicants."

The Tenant said that this pipe is not part of the upper rental unit. The uninsulated pipe is located under the deck, exposed to the elements, and extends from the lower part of the house. In looking at one of the Landlord's pictures of the pipe, the pipe comes out of the house, passes a valve, then continues straight up. The Tenant argued that one cannot

drain the excess water as the pipe going up extends for a long way and cannot be maneuvered. The Tenant points out that the pipe is not burst, rather the water pipe became separated from the valve, the Tenant speculates, probably because the water was in there when it froze.

The Tenant pointed out that there is a circular cap to vent the pipe. However, the valve is installed 180° the wrong way, and this prevents someone from draining the pipe once the tap is closed in the wintertime. The Tenant maintained that the Landlord never asked him or reminded him to turn off the water in the wintertime at this tap. The Tenant finished by saying that the Landlord did the plumbing at this spot, and he should not be responsible to fix it.

#### *Yard work*

The Landlords said the Tenant was supposed to take care of the yard work. They said they dropped the rent \$100.00 for the Tenant to do the yard work. The Landlords argued that the Tenant signed pictures of the house and yard when he moved in attesting to what the yard looked like. The Landlords had an estimate of \$400.00 to clean the yard up. The yard was all overgrown.

The Tenant said before the tenancy began, he asked the Landlords if they could go lower on the rent. He said they dropped the amount by \$100.00. There was no discussion about taking care of the yard, or electrical or pipes.

The Tenant testified that he split the job of cutting the grass with the lower suite tenants, but more often it was him who was maintaining the front and back lawns. The Tenant stated he cut the front and back lawns right up to the last month of the tenancy, as he was busy packing to move after receiving a Two Month Notice. The Tenant argued that he only last mowed the back lawn in that final month. He said he did his share.

#### *Drywall repair*

The Landlords claim \$180.00 for drywall repair to a wall in the small bedroom. The male Landlord called it 'impact damage.' The Landlords said this damaged drywall was not caused by the door going into the room. The Landlords did testify that the walls in the home and many cracks in the drywall, and most of those cracks the Landlords are not claiming compensation.

The Tenant wrote that they lived beside a house that was torn down. He said his daughter's room "was very bouncy when they were pounding on the old foundation with

the excavator.” The Tenant pointed to the fact that the Landlord did not upload photographs of all the cracks in his daughter’s bedroom, of which there were many.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

#### *Settled part of claim*

The Landlords claim for \$100.00 for the last month’s utility amount. The Tenant does not dispute that he owes the Landlords this sum. I grant the Landlords **\$100.00** for the outstanding utility amount owing.

#### ***Liability for not complying with this Act or a tenancy agreement***

- 7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
- (2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

#### ***Landlord and tenant obligations to repair and maintain***

- 32** (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*
- (a) complies with the health, safety and housing standards required by law, and*
  - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*
- (2) *A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*

- (3) *A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*

...

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline states, "*The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.*" This guideline must be read in conjunction with Sections 7 and 67 of the Act.

Policy Guideline #16 asks me to analyze whether:

- a party to the tenancy agreement has failed to comply with the Act, Regulation, or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and,
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

#### *Garage electrical*

The Landlords initially claimed the Tenant exposed a live electrical wire in the garage creating a dangerous situation. In the Landlords' reply, the male Landlord said that none of the wires were live. The Tenant said when he discovered the fallen fluorescent light fixture, he called the Landlord to inform them. The Tenant said he was told to disconnect the wires, and that the Landlord would bring someone in. No one came.

Section 32(1) of the Act states that the landlord is responsible for ensuring that rental units and property meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. The Landlord has not proven on a balance of probabilities that the Tenant failed to comply with the Act, Regulation, or tenancy agreement. I find that it is the Landlords' obligation to repair and maintain the rental unit. I decline to award compensation for this part of the Landlords' application.

*Exterior copper pipe under deck*

An exterior, uninsulated pipe which comes from the lower part of the house burst or broke apart, most likely caused by water freezing in the pipes. The Landlords claimed if the Tenant turned off the water to that pipe, it would not have burst. The Landlords also stated that the Tenant said he would fix it, but he did not. The Tenant testified that the pipe installation was done incorrectly, and the valve cap could not release the held water if opened.

Again, I refer to Section 32(1) of the Act, and the landlord's obligation to repair and maintain the rental unit. The Landlord has not proven on a balance of probabilities that the Tenant failed to comply with the Act, Regulation, or tenancy agreement. I find that it is the Landlords' obligation to repair and maintain the rental unit which includes damaged or blocked plumbing fixtures. I decline to award compensation for this part of the Landlords' application.

*Yard work*

The Landlords said the Tenant was supposed to take care of the yard work. They said the yard was all overgrown at the end of the tenancy. The Tenant stated there was no discussion about taking care of the yard during the tenancy; however, out of the two tenants living the residential property, the Tenant stated he mostly was the one who did the routine lawn mowing.

RTB Policy Guideline #1-Landlord & Tenant – Responsibility for Residential Premises ("PG#1") is intended to help parties understand issues that are likely to be relevant. PG#1 discusses property maintenance, and it states "Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds."

The Landlords stated that at the end of the Tenant's tenancy the yard was overgrown, and they incurred a \$400.00 expense to bring the yard back up to a regular standard. The tenancy ended because of a Two Month Notice, and there had been tenants in the lower unit who the Tenant shared the lawn mowing with. I find the Landlords have proven on a balance of probabilities that the Tenant had an obligation to keep up with, at least half of the routine yard maintenance. I grant the Landlords **\$200.00** compensation for this part of their claim.

*Drywall repair*

The Landlords claim \$180.00 for drywall repair to a wall in the small bedroom. The male Landlord called it 'impact damage.' The Landlords said this damaged drywall was not caused by the door going into the room.

The Tenant wrote that they lived beside a house that was torn down. He said his daughter's room "was very bouncy when they were pounding on the old foundation with the excavator." The Tenant pointed to the fact that the Landlord did not upload photographs of all the cracks in his daughter's bedroom, of which there were many.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. I find the Landlord has not proven on a balance of probabilities that the Tenant caused the damaged drywall. Accordingly, I decline to grant compensation for this part of the Landlords' claim.

The Landlords are entitled to compensation for their claims totalling **\$300.00** (unpaid utility \$100.00 + yard work \$200.00). Having been partially successful, I find the Landlords are entitled to recover **\$100.00** for the application filing fee paid to start this application. Pursuant to Section 72(2)(b) of the Act, I order that the Landlords are authorized to retain \$400.00 from the security deposit held by the Landlords in satisfaction of the monetary award.

The Landlords still hold \$600.00 of the Tenant's security deposit. The Tenant is within his right to make an application under the Act for the return of his security deposit.

Conclusion

The Landlords are granted \$100.00 for unpaid utilities for the last month of the tenancy.

The Landlords are granted \$200.00 compensation for damage or loss with respect to the residential property.

The Landlords are entitled to recovery of the \$100.00 application filing fee.



The Landlords are authorized to retain a total of \$400.00 from the security deposit held by the Landlords in satisfaction of the monetary award.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 06, 2023

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Residential Tenancy Branch